

 ORIGINAL

**INTERLOCAL AGREEMENT FOR THE IMPLEMENTATION OF THE SOUTHERN EDWARDS PLATEAU - HABITAT CONSERVATION PLAN**

This Interlocal Agreement for the Implementation of the Southern Edwards Plateau Habitat Conservation Plan (this "*Agreement*") is made and entered to be effective as of the Effective Date (defined on the signature page), by and between BEXAR COUNTY, TEXAS (the "*County*") and the CITY OF SAN ANTONIO, TEXAS (the "*City*"), which parties are sometimes referred to individually as a "*Party*" and collectively as the "*Parties*".

**BACKGROUND**

A. Chapter 791 of the Texas Government Code authorizes governments to contract with each other to provide governmental functions or services.

B. The County is a political subdivision of the State of Texas and a local government as defined in Section 791.003(4) of the Texas Government Code.

C. The City is a Texas municipal corporation and a local government as defined in Section 791.003(4) of the Texas Government Code.

D. The County and City previously entered into that certain Interlocal Agreement for the Development of the Southern Edwards Plateau Habitat Conservation Plan dated as of November 17, 2009 (the "*Development ILA*") for the purpose of jointly managing, coordinating, and funding the development of the regional habitat conservation plan called the Southern Edwards Plateau Habitat Conservation Plan ("*SEP-HCP*") in connection with an application by the Parties for an incidental take permit under Section 10(a) of the Endangered Species Act ("*ESA*").

E. The SEP-HCP will provide a mechanism to authorize "take" of the "Covered Species" (as defined in the SEP-HCP) to permit continued economic development in the region without the need for individual project ESA permits. The SEP-HCP provides for the issuance of an incidental take permit under Section 10(a) of the ESA to the Parties as joint permit holders, establishes a mechanism by which the Parties may proceed with public capital improvement projects in compliance with the ESA, provides a funding mechanism for the purchase and management of preserve system land, and provides a mechanism to allow private sector participation in the SEP-HCP.

F. The United States Fish and Wildlife Service (the "*USFWS*") has approved the SEP-HCP and issued a 30-year incidental take permit under section 10(a)(1)(B) of the ESA to the County and City, as co-permittees, under Permit No. TE48571B-0, dated effective January 18, 2016 (the "*Permit*"). The Permit authorizes an amount of "incidental take" of the Covered Species within the jurisdictions of the County and the City and through implementation of the SEP-HCP will promote the conservation of the Covered Species and related natural resources in the City, County, and other counties of the Southern Edwards Plateau.

G. The governing bodies for the County and the City have each respectively determined for themselves that they have the authority to hold the Permit and carry out the purposes and perform the services provided under the SEP-HCP and, accordingly, have each approved and accepted the SEP-HCP and the Permit and authorized the execution and performance of this Agreement.

H. The Parties wish to enter into this Agreement to establish the organizational structure and allocation of responsibilities for the coordination, administration, implementation, and funding of the SEP-HCP, and performance of their joint obligations under the Permit.

NOW, THEREFORE, in consideration of the recitals above and mutual covenants contained herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE I. AUTHORIZATION, PURPOSE, AND ACCEPTANCE

### 1.1 Authority and Purpose.

(a) This Agreement is entered into pursuant to the Interlocal Cooperation Act, Texas Government Code Chapter 791, and other applicable law, including Texas Parks and Wildlife Code Chapter 83.

(b) The purpose of this Agreement is to set out the terms governing and the rights and duties respecting the Parties' coordination, administration, implementation, and funding of the SEP-HCP, and performance of obligations thereunder and in accordance with the Permit.

### 1.2 SEP-HCP, Permit Acceptance, and Implementation Plan.

(a) The Parties hereby accept the Permit. To the extent that the defined terms of this Agreement as between the Parties conflict with defined terms set forth in the SEP-HCP, the terms of this Agreement shall control.

(b) Expenditures to be made by the Parties in the performance of this Agreement shall be made from current funds available to the Parties.

(c) The goals of the Implementation Plan are attached hereto as **Exhibit "A"**. The Coordinating Committee will develop an "Implementation Plan" based on the attached goals to assure the complete and timely implementation of the SEP-HCP. The Coordinating Committee shall not jeopardize the Permit by any action or inaction.

1.3 Term. This Agreement shall be effective upon the approval of both the City and County (the "*Effective Date*") and shall terminate upon termination of the Permit, unless terminated earlier pursuant to **Section 6.4** or **Section 7.1(b)** of this Agreement. A Party may not withdraw from this Agreement until such Party satisfies its obligations accruing under this Agreement prior to such withdrawal.

## ARTICLE II. CREATION OF COORDINATING COMMITTEE

### 2.1 Creation and Purpose.

(a) The SEP-HCP Coordinating Committee (the "*Coordinating Committee*") is hereby created as of the Effective Date pursuant to Section 791.013 of the Texas Government Code, as an instrumentality of the Parties.

(b) The Parties are authorized by state law to implement the SEP-HCP and the Coordinating Committee is created to carry out those essential governmental purposes.

**2.2 Coordinating Committee Membership.**

(a) The Coordinating Committee shall consist of six (6) voting members to be appointed as follows:

- (i) Three (3) voting members appointed by the County; and
- (ii) Three (3) voting members appointed by the City.

(b) The position of Coordinating Committee Chair shall be held by one of the members appointed by the City.

(c) Members of the Coordinating Committee by virtue of their membership on the Coordinating Committee, do not hold a civil office, an office of profit of trust, or emolument, within the meaning of Article XVI, Section 12, 30, or 40 of the Texas Constitution.

(d) The governing body for the County and the City appointing a Coordinating Committee member shall furnish a certified copy of the appointing resolution to the Coordinating Committee Secretary; and the Coordinating Committee members shall serve at the pleasure of their respective governing body.

**2.3 Committee Member Terms.**

(a) Coordinating Committee members will serve two (2) year terms, except as provided in (d) below.

(b) A member whose term expires continues to serve until a successor is appointed.

(c) Coordinating Committee members may be re-appointed for successive terms by the Party appointing such member.

(d) Initial terms for Coordinating Committee members shall be staggered such that no more than three (3) members' terms end in the same year between both Parties' members. Three of the members will have an initial term of one year and three of the members will have an initial term of two year terms. The designation of terms for the specific members will be determined by the Coordinating Committee.

**2.4 Meetings of the Coordinating Committee.**

(a) The Coordinating Committee shall meet regularly at least once each calendar quarter, on the dates and at locations determined by resolution of the Coordinating Committee.

(b) The Coordinating Committee shall meet specially if called by the Chair or requested in writing by any Coordinating Committee member. A request by a Coordinating Committee member for a special meeting must be in writing, addressed to the Chair, and describe the purpose or purposes of the

meeting. Only that business reasonably related to the purpose or purposes described in the request may be conducted at the special meeting.

(c) A quorum of the Coordinating Committee is four (4) voting members. A majority vote of such quorum is required to enact Coordinating Committee motions.

(d) Except where this Agreement provides otherwise, the conduct of Coordinating Committee meetings is governed by the latest edition of Robert's Rules of Order Newly Revised.

## **2.5 Notice.**

(a) Written notice, including an agenda, of each regular or special meeting of the Coordinating Committee must be delivered to each Coordinating Committee member. The notice and agenda must be delivered at least three (3) calendar days before a regular or special meeting. Delivery can be by U.S. Postal Service first class mail, electronic mail, or hand.

(b) Meetings and notice requirements of the Coordinating Committee are subject to the Texas Open Meetings Act, Chapter 551 of the Texas Government Code.

## **ARTICLE III. DUTIES OF THE COORDINATING COMMITTEE AND ADMINISTRATION**

**3.1 General Powers.** The Coordinating Committee has all of the powers of the Parties that are necessary and consistent with its duties set forth in this Agreement.

## **3.2 Principal Duties.**

(a) The Coordinating Committee is created and shall operate to carry out the purposes and goals of the SEP-HCP as stated therein.

(b) In furtherance of the purposes and goals of the SEP-HCP, but without limiting the powers granted above, the Coordinating Committee is authorized and expected to perform the following tasks as may be needed:

- (i) make recommendations to the Parties regarding annual budgets, alternative funding sources, and other actions necessary to implement the SEP-HCP;
- (ii) provide policy oversight and coordination for implementing the SEP-HCP, including coordination with USFWS;
- (iii) develop and administer guidelines for the management of all the lands in the SEP-HCP preserve system to ensure protection of the Covered Species and reasonable other uses such as recreation;
- (iv) review and evaluate on an ongoing basis the effectiveness of the implementation of the SEP-HCP to assure that the terms and conditions of the Permit are being met;

- (v) create technical advisory committees to assist and advise the Coordinating Committee in carrying out its duties by:
  - a. assisting the Parties in assessing biological quality and preserve value of lands for acquisition of property rights;
  - b. educating the public about the Covered Species, their habitat and the importance of carrying out the SEP-HCP
- (vi) identify and evaluate potential preserve lands and preservation credits

### **3.3 Administration.**

- (a) Administrative services for the Coordinating Committee shall be performed by the Secretary, who shall be designated by the City.
- (b) The Secretary serves as the chief administrative officer to the Coordinating Committee. The Secretary's duties include, but are not limited to, the following:
  - (i) Evaluating applications for participation and enrolling new Participants in the SEP-HCP;
  - (ii) Oversight of land management, including coordinating with preserve landowners and Plan Participants to ensure compliance with the terms of conservation easements and Participation Agreements (as defined in the SEP-HCP);
  - (iii) Coordinating program activities among the Parties, technical advisory committees, contractors, and the USFWS;
  - (iv) Preparing proposed annual budgets, record keeping and preparing the annual reports and other information for submittal to the Coordinating Committee, the Parties, and/or USFWS, as may be appropriate;
  - (v) Implementing administrative guidelines in accordance with the SEP-HCP; and
  - (vi) Managing program budgets and contractors.

### **3.4 Annual Budget.**

- (a) The Secretary shall prepare a proposed annual budget for review and submission by the Coordinating Committee to the Parties. Submission by the Coordinating Committee to the Parties shall occur no later than [May 1] for the following fiscal year; provided that for FY 2016-2017 the proposed annual budget submission may be made by the Secretary directly to the governing bodies of the County and City for review and approval. The budget must be reviewed and approved by the governing bodies of the County and City.
- (b) Each annual budget shall include a calculation of the direct costs of implementing the SEP-HCP (which may include projected costs for acquiring preserve lands, conservation easements, and conservation credits from existing conservation banks, and managing preserve

lands). If approved by both Parties, this amount shall be funded by the County and City from current funds then available to the Party making payment and in accordance with Article IV and the SEP-HCP.

- (c) The Coordinating Committee's fiscal year shall be October 1 through September 30.

**ARTICLE IV.  
FUNDING THE SEP-HCP**

**4.1 Obligations of Parties.**

- (a) The Parties agree to the following obligations:

(i) The City's Obligations:

- a. Provide an annual contribution in the amount calculated as one-half of the amounts calculated by the Coordinating Committee in accordance with **Section 3.4** of this Agreement and adopted in its budget as the City's equal share of funds necessary for implementation of SEP-HCP. Contributions may be made through in-kind services or staff support provided that such services are clearly delineated in the City's operating budget; and
- b. Manage its designated and acquired preserve system lands in accordance with Article V of this Agreement; and
- c. Use funds from Participation Certificate (as defined in the SEP-HCP) sales for preserve system land acquisition and preserve system needs; and
- d. Any Party acquiring a preserve shall also be responsible for the management of and reporting on that preserve in accordance with the SEP-HCP;

(ii) The County's Obligations:

- a. Provide an annual contribution in an amount calculated as one-half of the amounts calculated by the Coordinating Committee in accordance with **Section 3.4** of this Agreement and adopted in its budget as the County's equal share of funds necessary for implementation of SEP-HCP. Contributions may be made through in-kind services or staff support provided that such services are clearly delineated in the County's operating budget; and
- b. Manage its designated and acquired preserve lands in accordance with Article V of this Agreement; and
- c. Use funds from Participation Certificate sales for preserve system land acquisition and preserve system needs; and

d. Any Party acquiring a preserve shall also be responsible for the management of and reporting on that preserve in accordance with the SEP-HCP;

(b) The Parties agree to deposit all funds collected from Participation Certificates sales in the appropriate fund as established in Section 4.2 of this Agreement on a monthly basis.

(c) The Parties agree that all mitigation value associated with preserve system land which is not needed for public capital improvement projects shall be made available for sale through participation in SEP-HCP.

(d) The City shall establish an Operating Fund as specified in Section 4.2 of this Agreement. On a quarterly basis, each Party shall, no later than 30 days after the beginning of each quarter, forward to the Operating Fund the funds so required by such budget for that quarter year.

(e) The obligations expressly provided for in this Agreement constitute the sole financial obligations of the Parties.

(f) Notwithstanding anything in this Agreement to the contrary, each Parties' respective obligation to manage and report on a preserve shall survive the withdrawal of such Party from this Agreement or the termination of this Agreement.

#### **4.2 Operating Fund.**

(a) The City shall establish an Operating Fund with a local depository bank for the receipt of the SEP-HCP related revenues collected or provided by or on behalf of the Parties and for the payment of all expenses related to the SEP-HCP.

(b) The Operating Fund shall be an interest-bearing account, and all interest earned shall be added to the principal in said account.

(c) Funds collected from issuance of Certificates of Participation, and the interest earned thereon, shall be utilized and disbursed by the Coordinating Committee for authorized SEP-HCP purposes, only in compliance with the approved expenditure level in the approved annual budgets in accordance with the purchasing requirements of the City.

(d) Annual audit of the funds deposited in the account can be requested by either Party to be performed by an independent third party at the requestor's expense.

#### **4.3 Endowment Fund.**

The City shall create an Endowment Account to receive endowment funds from third parties contributing land to the SEP-HCP. The Endowment Account will be used to fund management and monitoring of preserves thus contributed to the SEP-HCP.

### **ARTICLE V.**

## **PRESERVE MANAGEMENT**

### **5.1 Land Management.**

(a) All of the SEP-HCP preserve system lands shall be managed in a manner which will not violate the Permit and in accordance with the SEP-HCP and land management guidelines and land management plans adopted pursuant to Section 5.2 of this Agreement. Reasonable access to preserve system lands shall be provided to Coordinating Committee representatives for inspection and monitoring or other functions as authorized in the annual budget. Each preserve tract will be managed by the entity owning that tract or holding an easement on that tract, as applicable.

(b) The Coordinating Committee Secretary will receive information on all land transactions and shall provide recommendations to the Coordinating Committee to ensure the integrity of the preserve system, and will prepare a comprehensive annual land management report to be submitted to the Coordinating Committee.

(c) The Coordinating Committee Secretary shall identify, prioritize, review, and authorize research on the Covered Species on the SEP-HCP preserve lands pursuant to Coordinating Committee guidelines for research and monitoring and its annual budget.

### **5.2 Land Management Guidelines.**

(a) Land Management Guidelines which identify minimum standards and limitations for land management were submitted to USFWS for its review and approval and are incorporated into the Implementation Plan.

(b) Amendments to the approved land management guidelines may be initiated by the Coordinating Committee. The proposed amendments shall be subject to approval by the governing bodies of the Parties, and shall be subject to approval of USFWS.

## **ARTICLE VI. DISSOLUTION OF THE COORDINATING COMMITTEE**

**6.1 Dissolution of Coordinating Committee.** Any dissolution of the Coordinating Committee will be through an amendment of this Agreement.

## **ARTICLE VII. GENERAL PROVISIONS**

### **7.1 Termination.**

(a) Notwithstanding anything to the contrary within this Agreement, if at any time during the term of this Agreement, the Commissioner's Court of Bexar County, Texas or the City Council of the City of San Antonio, Texas, fails to provide funding for all or any part of its obligations herein for the following fiscal year of such Party, the failing Party shall give notice to the Coordinating Committee and the other Party of such failure to fund. Upon receipt of such notice, the non-failing Party may elect to terminate this Agreement as their sole recourse.



(b) If a Party defaults in the performance of any of the terms or conditions of this Agreement, other than by failure to fund, the defaulting Party shall have 30 days after receipt of written notice of such default within which to cure the default. If the default is not cured within such period of time, then the non-defaulting Party shall have the right to terminate this Agreement upon written notice thereof to the other Party.

**7.2 Amendment of this Agreement.** The City Manager, the County Manager, or their respective designees may propose an amendment to this Agreement. An amendment to this Agreement is adopted if the governing bodies of each of the Parties adopt the amendment and furnish the Coordinating Committee Secretary with certified copies of the adopting resolutions.

**7.3 Notices.** To be effective, notices provided under this Agreement must be in writing, and shall be deemed to have been received for all purposes upon the earlier to occur of actual receipt, or three (3) days after the same are mailed by U.S. Postal Service certified or registered mail, return receipt requested, and addressed as follows:

If to the County:  
Bexar County Judge  
233 N Pecos, Suite 420  
San Antonio, Texas 78216

Bexar County Engineer  
233 N. Pecos, Suite 420  
San Antonio, Texas 78207  
Email [rgreen@bexar.org](mailto:rgreen@bexar.org)  
Fax: (210) 335-6713

If to the City:  
City Clerk  
City of San Antonio  
P. O. Box 83966  
San Antonio, Texas 78283-3966

Development Services Department  
Attn: Director  
City of San Antonio  
P. O. Box 83966  
San Antonio, Texas 78283-3966  
Phone: (210) 207-7950  
Fax: (210) 207-7897

or addressed to such other address as is provided by written notice from one Party to the other.

**7.4 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, and shall be fully enforceable in Bexar County, Texas.

7.5 **Formal Matters.** The relationship between the Parties under this Agreement shall be that of independent contractors, and not that of partners, joint ventures, or any other relationship. This Agreement sets out the entire agreement of the Parties in connection with the subject matter addressed herein, and may be modified or amended only in accordance with Section 7.2.

7.6 **Termination for Convenience.** Whenever either Party in its discretion deems it to be in that Party's best interest, it may terminate this Agreement for convenience. Such termination shall be effective 30 days after the terminating Party delivers written notice of termination of convenience to the other Party. The Parties shall have no additional liability to one another for termination under this Section.

7.7 **Prior Agreements Superseded.** This Agreement, including the exhibits, constitute the entire Agreement of the Parties regarding the subject matter of this Agreement and supersede all previous agreements and understandings, whether written or oral, relating to such subject matter, including the Development ILA.

7.8 **Assignment or Transfer of Interest.** Neither Party may assign its rights, privileges and obligations under this Agreement in whole, or in part, without the prior written consent of the other Party. Any attempt to assign without such approval shall be void.

7.9 **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalid, illegal, or unenforceable provision shall not affect any other provision hereof; and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein. This Agreement shall not be construed for or against either Party by reason of the authorship or alleged authorship of any provision, or by reason of the status of the respective Parties.

7.10 **Compliance With Laws and Ordinances.** Both Parties shall comply with all applicable federal, state, and local laws and ordinances related to the work and services performed under this Agreement.

7.11 **Force Majeure.** Neither Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees that result from acts beyond that Party's reasonable control, including acts of God, strikes or other labor disturbances, or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Section, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

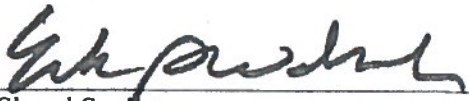
7.12 **Multiple Counterparts.** This Agreement may be executed in separate identical counterparts by the Parties and each counterpart, when so executed and delivered, will constitute an original instrument, and all such separate identical counterparts will constitute but one and the same instrument.

7.13 **No Third Party Beneficiary.** The terms and provisions of this Agreement are intended solely for the benefit of each Party hereto, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person or entity.

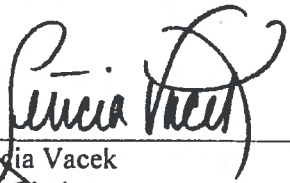
*[Signature Page Follows]*

EXECUTED to be effective on the latest date indicated below (the "Effective Date").

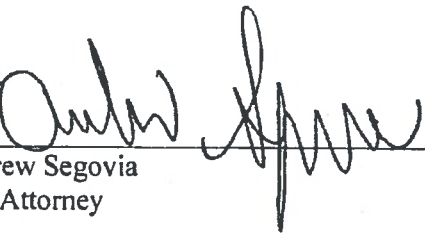
**CITY OF SAN ANTONIO**  
A Texas Municipal Corporation

By:   
Sheryl Sculley  
City Manager  
Date: \_\_\_\_\_

ATTEST:

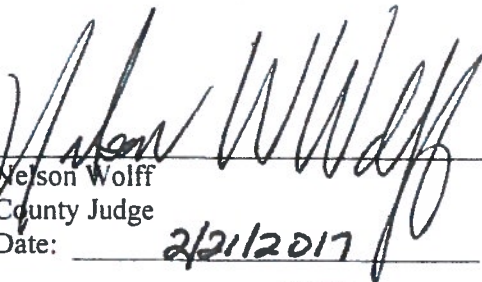
  
Leticia Vacek  
City Clerk

APPROVED AS TO LEGAL FORM:

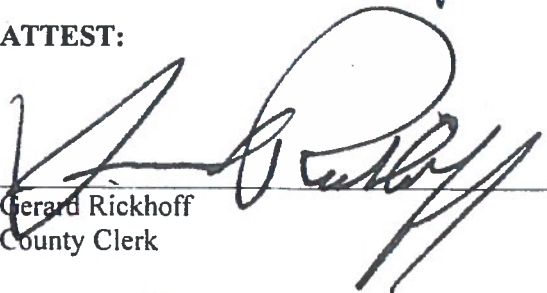
By:   
Andrew Segovia  
City Attorney



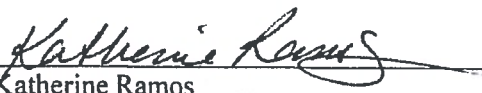
**COUNTY OF BEXAR**

By:   
Nelson Wolff  
County Judge  
Date: 2/21/2017

ATTEST:

  
Gerard Rickhoff  
County Clerk

APPROVED AS TO LEGAL FORM:

By:   
Katherine Ramos  
Assistant Criminal District Attorney  
Civil Section

APPROVED AS TO FINANCIAL  
CONTENT:

By:   
Susan Yeatts  
Bexar County Auditor

By:  for  
David Smith  
Bexar County Manager